



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENTS OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY
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NOTICE

TO AWARDING AUTHORITIES AND CONTRACTORS
CONCERNING DRIVERS WHO HAUL
BITUMINOUS CONCRETE AND READY-MIX CONCRETE

All awarding authorities and contractors are hereby notified that drivers who deliver bituminous concrete and ready-mix concrete to public construction projects, for which a prevailing wage schedule dated on or after August 22, 2001 has been issued, are covered by the Prevailing Wage Law, Mass. G. L. c. 149, §§ 26 - 27D, while the drivers are on-site at the public construction project. Those drivers are not covered by the prevailing wage law while off-site, including over-the-road driving and picking-up materials.

This applicability determination is codified in a decision of the Department of Labor and Workforce Development, Division of Occupational Safety ("DOS") issued on August 21, 2001 pursuant to Mass. G. L. c. 149, § 27A. That decision was issued in response to an appeal brought by 88 contractor employers and the Construction Industries of Massachusetts who argued for the repeal of an administrative policy that had required bituminous drivers to be paid prevailing wage rates for time spent traveling over-the-road. That policy also required ready-mix drivers to be paid prevailing wage rates for time spent traveling over-the-road.

The August 21, 2001 decision reasons that the prevailing wage law limits DOS's authority to set wage rates for bituminous and ready-mix drivers to work they perform at public construction sites only. Under this decision, prevailing wage rates will no longer apply to the time that bituminous and ready-mix drivers spend traveling over-the-road in connection with a public construction project. However, prevailing wage rates will continue to apply to the time that drivers who haul gravel and fill spend traveling over-the-road, as specifically mandated by a 1973 amendment to the prevailing wage law.

The Massachusetts Supreme Judicial Court, in Construction Industries of Massachusetts v. Commissioner of Labor and Industries, 406 Mass. 162, 546 N.E. 2d 367 (1989), affirmed that bituminous drivers are more than just materialmen and must be paid prevailing wage rates while on-site, although it did not render an opinion on whether those drivers should be paid prevailing wage rates for the time spent traveling over-the-road. Where a case remains silent, it is the responsibility of the administrative agency to provide guidance. The August 21, 2001 decision makes clear that the prior administrative policy, which required coverage for bituminous and ready-mix drivers over-the-road as well as on-site, was an improper expansion of coverage under the statute.

Awarding officials are encouraged to make this notice available to all contractors who may be engaged in projects involving the delivery of bituminous concrete and ready-mix concrete. Contractors are encouraged to notify workers that they are required to be paid prevailing wage rates while on-site at the public construction project. Certified weekly payroll reports must be submitted to awarding officials for all workers on all applicable hours.

Copies of the decision are available from DOS. If you have any questions concerning this matter, contact DOS at (617) 727-3492.